

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:05CR3039 &
)	4:05CR3091
Plaintiff,)	
)	
vs.)	
)	MEMORANDUM
THOMAS E. MILLER,)	AND ORDER
)	
Defendant.)	

Today, I conferred with counsel as contemplated by the Memorandum and Order entered December 14, 2009. Counsel for Defendant assured me that the family is prepared to pick up and care for Mr. Miller. Counsel for the government objected to the release of Mr. Miller until his provisional sentence in 4:05CR3039 is served. However, the government does not contest the release of Mr. Miller in 4:05CV3091.

While the conviction will stand in 4:05CR3039, I clearly have the discretion to release Miller now because my sentence was *provisional*. Given that Mr. Miller has served more than two years on the maximum provisional sentence of three years, given that Mr. Miller has served a longer time than he would have otherwise been required to serve under the Guidelines had a final sentence been imposed, and given Mr. Miller's advanced age and very poor physical and mental condition, release is clearly appropriate.

IT IS ORDERED that:

1. The Bureau of Prisons shall release Mr. Miller at 9:00 AM on December 23, 2009 when a member of the Miller family presents himself or herself to pick up Mr. Miller.
2. I encourage counsel for Mr. Miller to coordinate the "pick up" arrangements with the Bureau of Prisons and specifically with Adeirdre L. Stribling Riley, Ph.D., Federal Correctional Complex, Butner North

Carolina (919) 575-3900 (x5428). Dr. Stribling Riley's e-mail is: astribling@bop.gov.

3. My staff shall fax and e-mail a copy of this Memorandum and Order to Ms. Forbes Stovall, Movement Coordinator, Federal Correctional Complex, Butner, North Carolina, at 919-5755-4866 (fax) and kforbes@bop.gov. (e-mail). In addition, my staff shall e-mail a copy of this Memorandum and Order to Dr. Stribling Riley at: astribling@bop.gov.
4. The conviction of Mr. Miller in 4:05CR3039 remains in effect, but the provisional sentence is satisfied, set-aside and withdrawn. The Clerk shall close that case for statistical purposes only.
- 5 In 4:05CR3091, Mr. Miller is unconditionally released and that case is dismissed without prejudice.

Dated December 21, 2009.

BY THE COURT:

Richard G. Kopf

United States District Judge